

CHAPTER 10

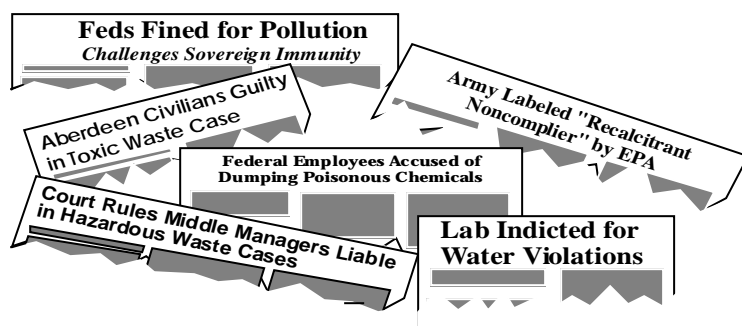
ENFORCEMENT OF HAZARDOUS WASTE REGULATIONS

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OVERVIEW

The effective implementation of the RCRA program depends on whether the people and companies regulated under RCRA comply with its various requirements. The goals of the RCRA enforcement program are to ensure that the regulatory and statutory provisions of RCRA are met, and to compel necessary action to correct violations. EPA and the states achieve these goals by closely monitoring hazardous waste handler (e.g., generator, transporter, and TSDf) activities, taking expeditious legal action when noncompliance is detected, and providing compliance incentives and assistance. Facility inspections by federal and state officials are the primary tool for monitoring compliance. When noncompliance is detected, legal action, in the form of an administrative order, a civil lawsuit, or a criminal lawsuit, may follow, depending on the nature and severity of the problem. EPA has also issued several policies to provide incentives for businesses to voluntarily evaluate their own compliance and disclose violations, and to assist small businesses in complying with the regulations. The combination of effective monitoring, expeditious legal action, and compliance incentives and assistance is intended to reduce the number of handlers operating in violation of RCRA requirements and to deter potential violations.



This chapter describes the three essential aspects of the enforcement program: compliance monitoring, enforcement actions, and compliance incentives and assistance. Almost all of the enforcement provisions detailed in this chapter are based on the Act, federal EPA policy, and Agency regulations. It is important to note that state requirements may be more stringent than those mandated by the federal government, and state enforcement authorities and procedures may differ from those of EPA.

COMPLIANCE MONITORING

One aspect of the enforcement program is monitoring facilities to verify that they comply with RCRA regulatory requirements. Monitoring serves several purposes, such as allowing EPA and the states to assess the effectiveness of specific legal actions that may have been taken already against a handler, and enabling EPA to gather data in support of a future rulemaking. In addition, the overall compliance monitoring program allows EPA to evaluate the effectiveness of state programs and to monitor nationwide compliance with RCRA. Finally, monitoring acts as a deterrent, encouraging compliance with the regulations by making acts of noncompliance susceptible to enforcement actions.

■ Inspections and Information Gathering

The primary method of collecting compliance monitoring data is through an inspection. Section 3007 of the Act provides the authority for conducting inspections. This section allows a representative of EPA or an authorized state to enter any premises where hazardous waste is handled to examine records and take samples of the wastes. In instances when criminal activity is suspected, EPA's National Enforcement Investigations Center may become involved.

Similarly, DOT may participate where waste transporters are involved. While all TSDFs must be inspected at least once every two years, HSWA requires that all federal- and state-operated facilities be inspected annually. Facilities may also be inspected at any time if EPA or the state has reason to suspect that a violation has occurred. Finally, facilities are chosen for an inspection when specific information is needed to support the development of RCRA regulations and to track program progress and accomplishments.

Inspections may be conducted by EPA, an authorized state, or both. Typically, either the state or EPA has overall responsibility, or the lead, for conducting the inspection. The inspection may include a formal visit to the handler, a review of records, taking of samples, and observation of operations.

■ Conducting the Inspection

Several steps are generally followed in RCRA inspections to ensure consistency and thoroughness; these steps are summarized below. The inspector prepares for the inspection by:

- Coordinating inspection activities with other regulatory or enforcement personnel as necessary
- Reviewing facility files
- Preparing an inspection plan
- Developing a checklist
- Packing appropriate safety equipment.



The first stage of the actual inspection is the facility entry. Upon entry, the inspector generally holds an opening conference with the owner and operator to discuss the nature of the inspection

and to describe the information and samples to be gathered. Following the opening conference, the actual inspection takes place, which may involve:

- Reviewing facility operations and waste management practices
- Reviewing records
- Conducting a visual inspection
- Identifying sampling requirements.

Finally, the inspector holds a closing conference with the owner and operator to allow him or her to respond to questions about the inspection and to provide additional information. The inspector usually summarizes the findings.

After the visit is completed, the inspector prepares a comprehensive report that summarizes the records reviewed, any sampling results, and the handler's compliance status with respect to RCRA.

The most important result of any inspection is the determination of whether the handler is in compliance with the regulations. The inspector may also determine compliance through examination of the reports that handlers are required to submit, or are part of normal waste handler operations. Reports may contain information about the wastes being handled, the method of handling, and the ultimate disposal of wastes. Reports are submitted as required in a permit or enforcement order (e.g., corrective action schedules of compliance) and by regulation (e.g., biennial report). If the handler is not complying with all of the appropriate state or federal requirements, enforcement action may be taken.

ENFORCEMENT ACTIONS

When compliance monitoring detects a violation, enforcement actions bring handlers into compliance with applicable Subtitle C regulations. The goal of enforcement actions is to compel:

TYPES OF ENFORCEMENT INSPECTIONS

- Compliance Evaluation Inspection — Routine inspections to evaluate compliance with RCRA. These inspections usually encompass a file review prior to the site visit; an on-site examination of generation, treatment, storage or disposal areas; a review of records; and an evaluation of the facility's compliance with RCRA.
- Case Development Inspection — An inspection when significant RCRA violations are known, suspected, or revealed. These inspections are usually intended to gather data in support of a specific enforcement action.
- Comprehensive Ground Water Monitoring Evaluation — An inspection to ensure that ground water monitoring systems are designed and functioning properly at RCRA land disposal facilities.
- Compliance Sampling Inspection — Inspections to collect samples for laboratory analysis. This sampling inspection may be conducted in conjunction with any other inspection.
- Operations and Maintenance Inspection — Inspections to ensure that ground water monitoring and other systems at closed land disposal facilities continue to function properly. These inspections are usually conducted at facilities that have already received a thorough evaluation of the ground water monitoring system through a comprehensive ground water monitoring inspection.
- Laboratory Audit — Inspections of laboratories performing ground water monitoring analysis to ensure that these laboratories are using proper sample handling and analysis protocols.

- Compliance with RCRA's waste handling standards
- Compliance with RCRA's recordkeeping and reporting requirements
- Monitoring and corrective action in response to releases of hazardous waste, and hazardous constituents.

EPA (or an authorized state) has a broad range of enforcement options including:

- Administrative actions
- Civil actions
- Criminal actions.

A decision to pursue one of these options is based on the nature and severity of the problem.

■ Administrative Actions

An **administrative action** is an enforcement action taken by EPA or a state under its own authority, without involving a court process. Administrative enforcement actions can take several forms, ranging from EPA or the state authority issuing informal notices of noncompliance, to orders that force facilities to take a certain action. Administrative actions tend to be resolved quickly and can often be quite effective in forcing a handler to comply with regulations or to remedy a potential threat to human health or the environment. Two types of administrative actions, informal actions and formal actions, provide for enforcement response outside the court system.

Informal Actions

An **informal administrative action** is any communication from EPA or a state agency that notifies the handler of a problem. It can take

many forms, such as a letter or a phone call. An informal letter to the handler may be called a **notice of violation** or a **notice of noncompliance**. For this type of action, EPA or the state notifies a handler that they are not in compliance with some provision of the regulations. This type of action is particularly appropriate when the violation is minor, such as a record maintenance requirement. If the owner and operator does not take steps to comply within a certain time period, a warning letter will be sent, setting out specific actions to be taken to move the handler into compliance. The warning letter also sets out the enforcement actions that will follow if the handler fails to remedy the violation.

Formal Actions

Alternatively, EPA or the state can take **formal action** when a more severe violation is detected, or the owner and operator does not respond to an informal action. Formal actions often take the form of an administrative order, which is issued directly under the authority of RCRA and imposes enforceable legal duties. Orders can be used to force a facility to comply with specific regulations; to take corrective action; to perform monitoring, testing, and analysis; or to address a threat to human health and the environment. An administrative order can be issued as a consent order, which documents an agreement between the Agency and the violator. EPA can issue four types of administrative orders under RCRA:

ADMINISTRATIVE ENFORCEMENT ACTIONS: A CASE STUDY

Following a routine inspection at a university, four facilities within the campus were found to be in violation of various RCRA requirements involving the management of hazardous wastes and the preparation of emergency procedures. EPA initiated an administrative action against the university to assess appropriate civil penalties. After negotiations with the university, EPA agreed to sign a consent order to set the cash penalty at \$69,570 and allow

the university to perform three supplemental environmental projects worth \$279,205. One project was to promote pollution prevention in the school's laboratories; the second was a hazardous chemical waste management training program to promote environmental compliance; and the third was the renovation of a building for use as a lead poison resource center to promote public health within a disadvantaged community.

- **Compliance orders** — §3008(a) of RCRA allows EPA to issue an order requiring any person who is not complying with a requirement of RCRA to take steps to come into compliance. A compliance order may require immediate compliance or may set out a schedule for compliance. The order can contain a penalty of up to \$27,500 per day for each day of noncompliance and can suspend or revoke the facility's permit or interim status. When EPA issues a compliance order, the person to whom the order is issued can request a hearing on any factual provisions of the order. If no hearing is requested, the order will become final 30 days after it is issued.
 - **Corrective action orders** — §3008(h) allows EPA to issue an order requiring corrective action at an interim status facility when there is evidence of a release of a hazardous waste or a hazardous constituent into the environment. EPA can issue a §3008(h) order to require corrective action activities including investigations, repairing liners, or pumping to treat ground water contamination. In addition to requiring corrective action, these orders can suspend interim status and impose penalties of up to \$27,500 for each day of noncompliance with the order (as discussed in Section III, Chapter 9).
 - **§3013 orders** — If EPA finds that a substantial hazard to human health and the environment exists, the Agency can issue an administrative order under §3013. A §3013 order is used to evaluate the nature and extent of the problem through monitoring, analysis, and testing. These orders can be issued either to the current owner and operator of the facility or to a past owner and operator (if the facility is not currently in operation or if the present owner and operator can not be expected to have actual knowledge of the potential release). Violation of §3013 orders can result in penalties of up to \$5,500 per day.
 - **§7003 orders** — In any situation where an imminent and substantial endangerment to health or the environment is caused by the handling of solid or hazardous wastes, EPA can order any person contributing to the problem to take steps to clean it up. This order can be used against any contributing party, including past or present generators, transporters, or owners or operators of the site. Violation of §7003 orders can result in penalties of up to \$5,500 per day (as discussed in Section III, Chapter 9).
- In Fiscal Year 1996, EPA initiated 1,186 formal administrative actions (see Figure III-36).

■ Civil Actions

In addition to formal and informal administrative actions, some statutory authorities allow EPA to initiate **civil actions**, also known as judicial actions. A civil action is a formal lawsuit, filed in court, against a person who has either failed to comply with a statutory or regulatory requirement or administrative order, or against a person who has contributed to a release of hazardous waste or hazardous constituents. Civil actions are often employed in situations that present repeated or significant violations or where there are serious environmental concerns. Attorneys from the U.S. Department of Justice



CIVIL ENFORCEMENT ACTIONS: A CASE STUDY

EPA filed a complaint with a U.S. District Court against a repeat violator, alleging noncompliance with RCRA hazardous waste storage standards. The violator, subject to a prior enforcement action, had ignored a final administrative order issued by EPA. That order required immediate compliance with RCRA regulatory obligations and the payment of \$74,105 in civil penalties. Since the issuance of the final order, the violator not only failed to pay any

of the assessed civil penalty, but continued to violate the RCRA regulations. EPA sued the violator for collection of the past due amount under the administrative order, plus interest and costs, and a further civil penalty for continuing and additional violations. The federal judge in the case ordered the violator to pay past administrative penalties, and to pay an additional fine for violating the past order.

(DOJ) prosecute RCRA civil cases for EPA, while the state attorneys general assume this role for the states. In Fiscal Year 1996, EPA referred 1,280 cases for civil action (see Figure III-36).

Civil actions are useful in several situations. When the person being sued has not complied with a previously issued administrative order, the courts may impose penalties to force the handler to comply. When a long-term solution to a problem is desired, a civil action may be helpful to ensure proper supervision of the handler's actions. Civil actions may be used when noncompliance with an administrative order presents a danger to public health or the environment. They also may provide stronger deterrence to noncompliance than an administrative order, because civil judicial cases can be costly and lengthy.

RCRA provides EPA the authority for filing four different types of civil actions:

- **Compliance action** — Under §3008(a), the federal government can file suit to force a person to comply with any applicable RCRA regulations. In federal actions, the court can impose a penalty of up to \$27,500 per day per violation for noncompliance.
- **Corrective action** — In a situation where there has been a release of hazardous waste or hazardous constituents from a facility, the federal government can sue to require the facility to correct the problem and take any

necessary response measures under §3008(h). The court can also suspend or revoke a facility's interim status as a part of its order (as discussed in Section III, Chapter 9).

- **Monitoring and analysis** — If EPA has issued a monitoring and analysis order under §3013 of RCRA and the person to whom the order was issued fails to comply, the federal government can sue to require compliance with the order. In this type of case, the court can assess a penalty of up to \$5,500 per day of noncompliance with these orders.
- **Imminent and substantial endangerment** — As with a §7003 administrative order, when any person has contributed or is contributing to an imminent and substantial endangerment to human health and the environment, the federal government can sue the person to require action to remove the hazard or remedy any problem. If the Agency first issued an administrative order, the court can also impose a penalty of up to \$5,500 for each day of noncompliance with those orders (as discussed in Section III, Chapter 9).

Frequently, several of the civil action authorities will be used together in the same lawsuit. This is particularly likely to happen where a handler has been issued an administrative order for violating a regulatory requirement, has ignored that order, and is in continued noncompliance. In this circumstance, a lawsuit can be filed that seeks

penalties for violating the regulations, penalties for violating the order, and a judge's order requiring future compliance with the regulations and the administrative order.

■ Criminal Actions

In addition to administrative or civil actions, EPA may also enforce against a facility through a **criminal action**, depending on the nature and severity of the violation. Criminal actions are usually reserved for only the most serious violations. A criminal action initiated by the federal government or a state can result in the imposition of fines or imprisonment. In Fiscal Year 1996, EPA initiated 262 criminal referrals (see Figure III-36). Seven acts identified in §3008 of RCRA are subject to criminal action and carry criminal penalties. The penalties range from a fine of up to \$50,000 per day or a prison sentence of up to five years, to a total fine up to \$1 million and up to 15 years in prison.

Six of the seven criminal acts carry a penalty of up to \$50,000 per day and up to five years in jail. Stated briefly, these acts are knowingly:

- Transporting waste to a nonpermitted facility
- Treating, storing, or disposing of waste without a permit or in violation of a material condition of a permit or interim status standard



- Omitting important information from, or making a false statement in a label, manifest, report, permit, or interim status standard
- Generating, storing, treating, or disposing of waste without complying with RCRA's recordkeeping and reporting requirements
- Transporting waste without a manifest
- Exporting a waste without the consent of the receiving country.

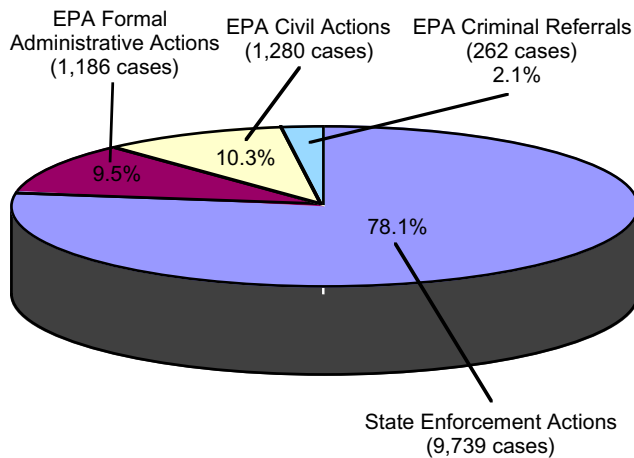
The seventh criminal act is the knowing transportation, treatment, storage, disposal, or export of any hazardous waste in such a way that another person is placed in imminent danger of death or serious bodily injury. This act carries a possible penalty of up to \$250,000 or 15 years in prison for an individual, or a \$1 million fine for a corporation.

CRIMINAL ENFORCEMENT ACTIONS: A CASE STUDY

A warehouse worker employed by a chemical manufacturer was instructed by the president of the company to dispose of unwanted hazardous chemicals. The worker loaded the hazardous waste in his pickup truck and dumped it in a dumpster located in a low-income community. The president of the chemical company later paid the worker \$400 for disposing of the chemicals. Upon discovery of the hazardous waste, the residents of three nearby

apartment buildings had to be evacuated. The company president was sentenced by a U.S. District Court to five years probation, 200 hours of community service, and more than \$5,000 restitution for the unlawful disposal of hazardous waste. The warehouse worker was sentenced to five years probation, six months of home detention, and more than \$5,000 in restitution. As part of the plea agreement, the company was forced to pay \$43,984 in restitution.

**Figure III-36:
FISCAL YEAR 1996
ENFORCEMENT ACTIVITIES**



CIVIL PENALTY POLICY

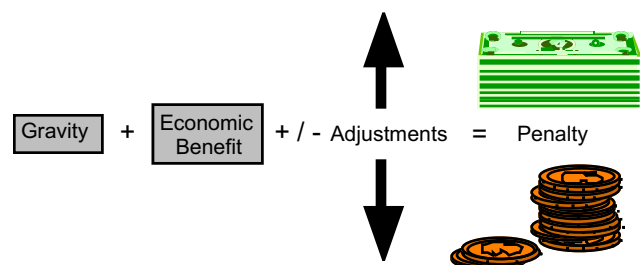
EPA's *Civil Penalty Policy* is designed to provide guidance and consistency in assessing noncriminal penalty amounts for both administrative actions and in settlements of civil judicial enforcement actions. The policy serves many purposes, including ensuring that:

- Penalties are assessed in a fair and consistent manner
- Penalties are appropriate for the seriousness of the violation
- Economic incentives for noncompliance are eliminated
- Penalties are sufficient to deter persons from committing RCRA violations
- Compliance is expeditiously achieved and maintained.

EPA's penalty policy utilizes a calculation system to determine the amount of a penalty, based on four components. These components include: 1) the gravity (i.e., severity) of the particular violation; 2) the duration of the violation; 3) the economic benefit gained through noncompliance; and 4) any site-specific adjustments (see Figure III-37).

One type of site-specific adjustment that provides EPA with flexibility in assessing penalties is called a **supplemental environmental project**. OECA issued its *Interim Revised Supplemental Environmental Projects Policy* in 1995. These are environmentally beneficial projects which a defendant or respondent agrees to undertake in the settlement of a civil or administrative enforcement action, but which the defendant is not otherwise legally required to perform. For example, a violator may agree to restore and protect a wetland or an endangered species habitat. In appropriate circumstances, EPA may

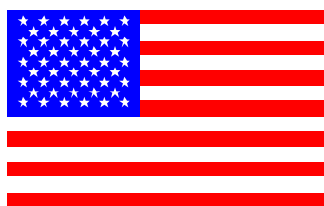
**Figure III-37:
CIVIL PENALTY CALCULATION**



adjust the final settlement penalty for a violator who agrees to perform a project so that it is lower compared to that of a violator who does not agree to perform such a project.

ENFORCEMENT AT FEDERAL FACILITIES

In the past, federal facilities have been subject to the RCRA regulations, but not to civil fines or penalties. This limited waiver of sovereign immunity made enforcement at federal facilities less effective. In 1992, however, Congress passed the Federal Facilities Compliance Act, which



expressly waived sovereign immunity against civil fines and penalties and clarified that EPA has the authority to issue administrative enforcement orders

against a federal department or agency in the same manner and under the same circumstances as an action taken against another person. No EPA issued administrative order becomes final until the federal department or agency has had the opportunity to confer with the EPA Administrator.

COMPLIANCE ASSISTANCE AND INCENTIVES

Over the past few years, EPA has issued numerous policies to provide compliance assistance and incentives to the regulated community. By helping businesses understand the regulations, and by providing certain incentives for compliance, EPA hopes to move closer to its goal of ensuring compliance with all RCRA requirements. Two policies in achieving this goal are the *Final Policy on Compliance Incentives for Small Businesses* and *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (also known as the EPA Audit Policy).

■ Small Business Compliance Incentives and Assistance

The *Final Policy on Compliance Incentives for Small Businesses* is intended to promote environmental compliance among small businesses by providing incentives to participate in compliance assistance programs, conduct audits, and promptly correct violations. A small business is defined as a person, corporation, partnership, or other entity who employs 100 or fewer individuals, across all facilities and operations owned by the entity. The policy sets guidelines for EPA and the states on reducing or waiving penalties for small businesses that make good faith efforts to correct violations.



Under this policy, EPA may eliminate or mitigate its settlement penalties based on certain criteria. The small business needs to make a good faith effort to comply with applicable environmental requirements by either detecting a violation during on-site compliance assistance from a government or government-supported program, or by conducting an internal audit and promptly disclosing in writing all violations discovered as part of the audit. The violation should also be the first for the small business; this policy does not apply to businesses that have been subject to warning letters or any other type of enforcement action. The small business needs to also correct the violation within the time period allowed, which in most cases is 180 days. For the policy to apply, the violation also can neither be one that has caused actual serious harm to human health or the environment, nor one that involves criminal conduct.

To assist businesses in complying with the regulations, OECA, in conjunction with industry, academic institutions, environmental groups, and other agencies, has opened compliance assistance centers. These centers provide assistance to small businesses, in addition to providing industry-specific information to state and local government officials. The compliance centers serve members of industries such as printing, metal finishing, automotive services and repair, and agriculture.

■ Self-Audit Policy

EPA's policy regarding *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* encourages regulated entities to voluntarily discover, disclose, and correct violations of environmental requirements. This policy is designed not only to encourage greater compliance with the laws, but also to achieve maximum compliance through active efforts by the regulated community.

The Agency provides incentives, such as eliminating or reducing the gravity component of civil penalties by 75 percent, for companies that conduct voluntary audits. EPA also may choose not to recommend criminal prosecution of a regulated entity based on voluntary disclosure of violations that are discovered through audits and disclosed to the government before an investigation occurs.

The policy has certain limitations. As with the small business policy, companies may not be able to gain relief under this policy for repeated violations, violations that present a serious or imminent harm to human health or the environment, or violations that involve criminal activity. Also, the violation should be discovered through an environmental audit or through a documented, systematic procedure which reflects

the company's due diligence in preventing, detecting, and correcting violations. To receive the penalty mitigation, the regulated entity should correct the violation within 60 days, unless written notice is provided indicating a longer time frame, and needs to certify in writing that the violations have been corrected. Finally, the regulated entity needs to take steps to prevent a recurrence of the violation.

AGENCY FUNCTIONS

Responsibility for the various components that make up the RCRA enforcement program is divided among different EPA Headquarters offices, the EPA Regions, and state agencies. EPA Headquarters is responsible for setting nationwide policy, monitoring regional and state activities, and providing technical support. The EPA Regions take primary federal responsibility for performing inspections, issuing administrative orders, preparing civil actions, monitoring compliance with administrative and judicial orders, and providing support to DOJ for ongoing lawsuits. As with many other aspects of the RCRA program, responsibility for enforcement is largely decentralized. Authorized states take primary responsibility for enforcement in close cooperation with their respective EPA Region. EPA, however, retains its authority to take enforcement actions in authorized states if the state fails to do so, does not obtain acceptable results, or requests EPA assistance.

SUMMARY

There are three essential elements to RCRA's enforcement program: compliance monitoring, enforcement actions, and compliance assistance and incentives.

Compliance monitoring is used to determine a handler's level of compliance with RCRA's regulatory requirements. The primary method of collecting compliance monitoring data is through an inspection.

Either EPA or an authorized state may lead inspections. Inspections must be conducted annually at all federal- or state-operated facilities and at least once every two years at each TSDF. The six types of inspections conducted under the RCRA program are:

- Compliance evaluation inspection
- Case development inspection
- Comprehensive ground water monitoring evaluation
- Compliance sampling inspection
- Operations and maintenance inspection
- Laboratory audit.

The primary goal of enforcement actions is to bring facilities into compliance and ensure future compliance. The enforcement options available under RCRA are:

- Administrative actions, including informal and formal actions
- Civil actions
- Criminal actions.

EPA uses the guidelines in the *Civil Penalty Policy* for assessing penalty amounts and uses the *Interim Revised Supplemental Environmental Projects Policy* to allow for flexibility in assessing penalties.

Enforcement of RCRA at federal facilities is now similar to enforcement at TSDFs, as a result of the Federal Facility Compliance Act of 1992.

To achieve greater compliance, EPA also offers compliance assistance through numerous policies, including *Final Policy on Compliance Incentives for Small Businesses* and *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*.

The responsibility for the various enforcement actions is divided among different EPA Headquarters offices, EPA Regions, and authorized state agencies.

